



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/166477

PRELIMINARY RECITALS

Pursuant to a petition filed June 03, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 30, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid \$9,064.00 in FoodShare (FS) benefits from July 1, 2012 through July 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao-Xiang
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 17, 2015 the agency sent the petitioner a FoodShare Overpayment notice for claim number [REDACTED]. This was for the period from July 1, 2012 through January 31, 2013. The total FS overpayment was \$2,469.00. This overpayment was due to client error.

3. In June 2012 the petitioner completed a renewal of her FoodShare (FS) benefits. During the renewal the petitioner reported the household's income through employment verification of income forms (EVFE).
4. On July 2, 2012 the agency sent a petitioner a notice stating the amount of her monthly FoodShare (FS) benefits. The notice also informed the petitioner that "if the household's total monthly income (before taxes) goes over \$4,077.00, [she] must report it by the 10th day of the next month.
5. In July 2012 the household's monthly gross income was \$4,521.89. Between July 2012 and December 21, 2012 the petitioner never informed the agency of the household's monthly gross income.
6. In December 2012 the petitioner provided paystubs to the agency. The agency incorrectly budgeted these paystubs by failing to include overtime, funeral, and holiday pay. Had the agency correctly budgeted this income, the petitioner's monthly household gross income, would have been over 130% of the FPL.
7. On December 24, 2012 the agency sent the petitioner a notice stating that her monthly FS benefits decreased. The notice further informed the petitioner that "if the household's total monthly income (before taxes) goes over \$4,214.00, [she] must report it by the 10th day of the next month.
8. The agency does not allege an overpayment due to client error between February 1, 2013 and October 31, 2013. Rather, the agency concedes that there would have been an overpayment, but the overpayment was due to agency error of incorrectly budgeting paystubs. Based upon their date of discovery, they do not believe that this portion of the overpayment is collectable. The date of discovery is October 6, 2013.
9. The petitioner's monthly household's gross income between July 1, 2012 and January 31, 2013 is as follows: \$4,521.89 in July 2012, \$5,774.10 in August 2012, \$3,894.73 in September 2012, \$5,349.78 in October 2012, \$4,989.62 in November 2012, \$4,472.74 in December 2012, and \$4,524.63 in January 2013.
10. The petitioner was overpaid the following FS benefits between July 1, 2012 and January 31, 2013: \$111.00 in September 2012, \$421.00 in October 2012, \$421.00 in November 2012, and \$421.00 in December 2012.
11. On March 17, 2015 the agency sent the petitioner a FoodShare Overpayment notice for claim number [REDACTED]. This was for the period from November 1, 2013 through July 31, 2014. The total FS overpayment was \$6,595.00. This overpayment was due to agency error.
12. In January 2014 the petitioner completed a renewal for her FS benefits. During the renewal the petitioner had an obligation to report her actual household income. She did report this actual income. Rather she reported that the previously under budgeted income was correct.
13. On January 9, 2014 the agency sent the petitioner a notice stating the amount of her monthly FS benefits did not change. The notice further informed the petitioner that "if the household's total monthly income (before taxes) goes over \$3,637.50, [she] must report it by the 10th day of the next month.
14. The petitioner does not report any changes between January 2014 and July 2014.
15. On July 8, 2014 the agency processes a renewal for the petitioner's FS benefits. The petitioner reports no changes to her previously underreported household gross income. The agency request verification. The petitioner fails to provide verification, and the household's FS case closes July 31, 2014.
16. The petitioner's monthly household gross income between November 1, 2013 and July 31, 2014 is as follows: \$5,596.33 in November, \$4,266.18 in December, \$6,328.00 in January, \$4,878.71

in February, \$5,181.74 in March, \$5,030.85 in April, \$4,834.80 in May, \$6,658.56 in June, and \$7,221.15 in July.

17. The petitioner was overpaid the following FS benefits between November 1, 2013 and July 31, 2014: \$767.00 in November 2013, \$546.00 in December 2013, \$767.00 in January 2014, \$730.00 in February 2014, \$767.00 in March 2014, \$767.00 in April 2014, \$717.00 in May 2014, \$767.00 in June 2014, and \$767.00 in July 2014.

DISCUSSION

The Federal regulations requires States to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSWH)*, §7.3.2. Overpayments due to “client error” may be recovered for up to six years after discovery. *FSWH*, §7.3.2.1. Overpayments due to “agency error” may only be recovered for up to 12 months from the date of discovery. *Id.* The date of discovery is the date that the agency became aware of the potential overissuance. *Id.* This is synonymous with the date of awareness. *Id.*

When a household applies for FS or completes a FS renewal the household reports their monthly gross income. *FSWH* § 6.1.2; *FSWH* § 2.1.1; *FSWH* § 1.2.4. In addition to these certification or report periods, FS regulations require a household to report when their income exceeds 130% of the federal poverty level (FPL). *FSWH* § 6.1.1.2. The household must report this income by the 10th of the month following the income exceeding 130% of the FPL. *Id.* These changes go into effect the month following the report. *FSWH* § 6.1.3.6.

In this case the petitioner completed a renewal of her FS benefits in June 2012. During the renewal the petitioner submitted employment verification forms. The agency processed those forms, and sent the petitioner a notice in July 2012. This notice informed the petitioner that she must report to the agency by the 10th day of the following month if her monthly household gross income went above \$4,077.00. This amount is 130% of the Federal Poverty Limit (FPL) for the petitioner’s household size in July 2012. The petitioner’s monthly household income was above that amount in July 2012. She had an obligation to report that in August 2012. These changes would have been effective September 1, 2012.

The agency incorrectly included July and August 2012 when calculating the overpayment. The agency argues that the petitioner’s actual income was greater than the employment verification forms that she submitted. The employment verification forms are completed by the employer. These forms are an acceptable form of verification for income. The employer best estimates a person’s monthly gross income, and submits the completed form to the agency. In this case the petitioner’s husband’s income fluctuated. He often worked overtime. This caused his gross pay to vary from month to month. There is nothing in the record to support that these employment verification forms were fraudulent or intentionally misrepresented the household’s income. Thus, there is a reporting requirement when a family’s income increases above 130% of the FPL. This reporting requirement was triggered in July. The petitioner had until August to report her household income. Those changes would have gone into effect in September. Thus, the agency correctly calculated the overpayment from September 1, 2012 through November 30, 2012. The petitioner was overpaid the following FS benefits during this time period: \$111.00 in September 2012, \$421.00 in October 2012, \$421.00 in November 2012, and \$421.00 in December 2012.

The agency incorrectly established an overpayment in January 2013. In December 2012 the petitioner provided the agency paystubs verifying her household income. The agency incorrectly budgeted these paystubs by failing to include overtime, holiday, and funeral pay. Changes reported in December 2012 go into effect in January 2013. Thus, the petitioner was not required to report her household income in January 2013. I note that the agency concedes that they cannot establish and collect an overpayment due

to agency error between February 1, 2013 and October 31, 2013 because they are too far removed from the date of discovery. The same would apply to overpayment caused by agency error in January 2013. Thus, there is no overpayment between January 1, 2013 and October 31, 2013.

The agency concedes that they first discovered a potential overpayment October 6, 2014. They may recover an overpayment based upon agency error going back 12 months from this date of discovery. Twelve months from this date of discovery is October 6, 2013. The agency established an overpayment due to agency error beginning in November 2013. This is correct. The agency properly calculated an overpayment in the amount of \$767.00 for November 2013 and \$546.00 for December 2013.

In January 2014 the petitioner completed another renewal of her FS benefits. During her renewal, she did not report her actual household income. Rather, she reported that the previously under budgeted income was correct. The agency then sent the petitioner a notice stating the amount of her monthly FS benefits did not change. The notice further informed the petitioner that "if the household's total monthly income (before taxes) goes over \$3,637.50, [she] must report it by the 10th day of the next month. The petitioner does not report any changes between January 2014 and July 2014. The agency thus properly established an overpayment between January 1, 2014 and July 31, 2014 based upon this incorrect report. The petitioner's FS benefits closed July 31, 2014 when the petitioner failed to verify her household income at another six month renewal. The petitioner was overpaid the following FS benefits between January 1, 2014 and July 31, 2014: \$767.00 in January 2014, \$730.00 in February 2014, \$767.00 in March 2014, \$767.00 in April 2014, \$717.00 in May 2014, \$767.00 in June 2014, and \$767.00 in July 2014.

CONCLUSIONS OF LAW

The agency correctly established an overpayment under claim number [REDACTED] in the amount of \$6595.00 for the period from November 1, 2013 through July 31, 2014 due to agency error. The agency incorrectly established a portion of the overpayment in claim number [REDACTED]. The agency should have only established an overpayment from September 1, 2012 through December 31, 2012 in the amount of \$111.00 in September 2012, \$421.00 in October 2012, \$421.00 in November 2012, and \$421.00 in December 2012 for a total of \$1374.00. The remaining portion of this overpayment was incorrectly established as discussed above.

THEREFORE, it is

ORDERED

That this case is remanded to the agency to rescind the overpayment notice under claim number [REDACTED]. The agency shall re-issue an overpayment notice for the period from September 1, 2012 through December 31, 2012 in the amount of \$1374.00 due to client error. The agency has 10 days from the date of the decision to comply with this order. In all other respects this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

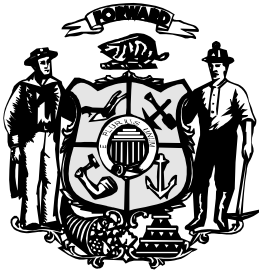
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of July, 2015

\s\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



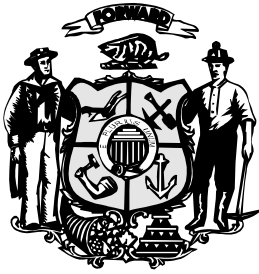
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Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 20, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability



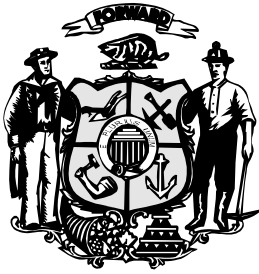
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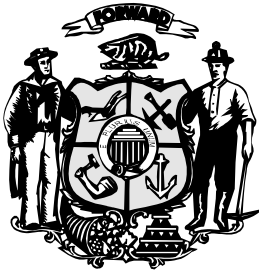
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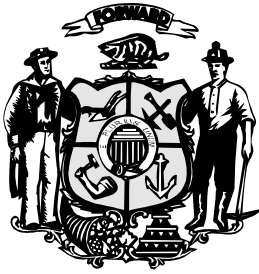
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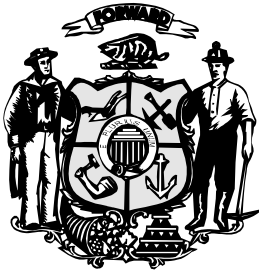
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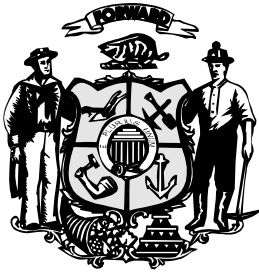
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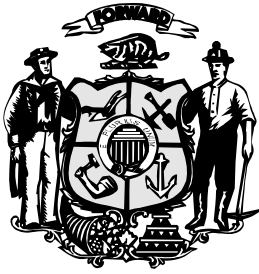
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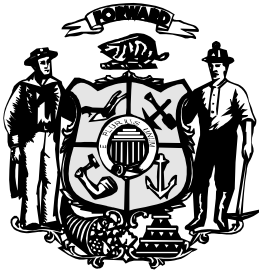
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